

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1447 of 2013

Elango

..Petitioner/Complainant

Vs.

Masilamani

..Respondent/Accused

Criminal Revision filed under Sections 397 and 401 Cr.P.C., to set aside the judgment and order dated 03.08.2006 passed in C.C.No.72 of 2005 on the file of the Judicial Magistrate Court, Dharapuram, Erode, confirmed by the judgment and order dated 30.03.2007 passed in C.A.No.243 of 2006 on the file of the Additional District and Sessions Court (Fast Track Court No.III), Dharapuram, Erode.

For Petitioner : Mr.R.Narendran
For Respondent : Mr.M.Guruprasad

ORDER

This criminal revision has been filed seeking to set aside the judgment and order dated 03.08.2006 passed in C.C.No.72 of 2005 on the file of the Judicial Magistrate Court, Dharapuram, Erode, confirmed by the judgment and order dated 30.03.2007 passed in C.A.No.243 of 2006 on the file of the Additional District and Sessions Court (Fast Track Court No.III), Dharapuram, Erode.

2. For the sake of convenience, the petitioner and the respondent will be referred to as complainant and accused, respectively.

3. It is the case of the complainant that the accused borrowed a sum of Rs.60,000/- on 24.10.2004; towards the debt, the accused gave a cheque (Ex-P1) dated 25.11.2004 for a sum of Rs.60,000/-; when the complainant presented the cheque (Ex-P1), it was returned unpaid with the endorsement "Funds Insufficient"; therefore, the complainant issued a statutory demand notice (Ex-P3) dated 02.12.2004, which was received by the accused on 07.12.2004 vide postal acknowledgement card (Ex-P4); since the accused did not comply with the demand, the complainant initiated a prosecution in C.C.No.72 of 2005 before the Judicial Magistrate Court, Dharapuram, for the offence under

Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused.

4. Before the trial Court, the complainant examined himself as PW1 and marked five exhibits. The accused examined five witnesses and marked two exhibits.

5. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 03.08.2006 in C.C.No.72 of 2005, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to two years simple imprisonment.

6. Challenging the above conviction and sentence, the accused filed an appeal in C.A.No.243 of 2006, in which, the Additional District and Sessions Court (Fast Track Court No.III), Dharapuram, by judgment and order dated 30.03.2007, confirmed the conviction, but, reduced the substantive sentence of two years simple imprisonment to imprisonment till the rising of the Court and imposed a fine of Rs.11,000/-, in default to undergo six months rigorous imprisonment. Out of Rs.11,000/-, a sum of Rs.6,000/- was directed to be paid as compensation to the complainant.

7. Aggrieved by the drastic reduction of sentence, the complainant has filed the present criminal revision.

8. Heard Mr.R.Narendran, learned counsel for the complainant and Mr.M.Guruprasad, learned counsel for the accused.

9. It is seen that the appellate Court has not given any sound reasons for such a drastic reduction of sentence. Time and again, the Supreme Court has held that the Court should generously award compensation to the victim. In fact, punishment for Section 138 of the NI Act can extend to a fine amounting to twice the cheque amount. The appellate Court had lost sight of the object of the legislation and has awarded a fleabite sentence.

10. In such perspective of the matter, the conviction of the accused of the offence under Section 138 of the NI Act stands confirmed. The substantive sentence of imprisonment till rising of the Court imposed on the accused by the appellate Court cannot be set aside at this distant point of time as the accused would have already undergone it. Hence, instead of restoring the sentence imposed by the trial Court, this Court is of the view that the interests of justice will be subserved if compensation is ordered.

11. In view of the above, the accused is directed to deposit the cheque amount of Rs.60,000/- as compensation to the complainant in the trial Court within six weeks from 28.02.2020, in default to undergo three months simple imprisonment.

Resultantly, this criminal revision is partly allowed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Dharapuram, Erode.
2. The Additional District
and Sessions Judge,
(Fast Track Court No.III),
Dharapuram, Erode.
3. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

with a direction to return the
original records to the Courts
below concerned

+1 cc to M/s.M.Guruprasad, Advocate Sr.No. 17293

AKM/28.02.2020/3P-5C /

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सत्यमेव जयते

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